

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ALBERT GRAY, Administrator, *et al*

v.

JEFFREY DERDERIAN, *et al*

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C.A. No. 04-312 L

**ANSWER OF DEFENDANT, BARRY WARNER,  
TO PLAINTIFFS' COMPLAINT**

Now comes Defendant, ***Barry Warner***, and hereby provides answer to Plaintiffs'

Complaint as follows:

**PARTIES**

**Plaintiffs**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 1-226 of Plaintiffs' Complaint, and, therefore, leaves Plaintiffs to their proof.

**GENERAL ALLEGATIONS AS TO ALL DEFENDANTS**

271. Defendant denies the allegations set forth in Paragraph 271 of Plaintiffs' Complaint.

272. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

273-279. As to Paragraphs 273-279 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and, therefore, denies same.

## **COUNTS 1-40, 43-64**

As to Paragraphs 280, 282, 287, 289, 294, 296, 300, 302, 308, 310, 316, 318, 324, 326, 332, 340, 342, 348, 350, 356, 358, 364, 366, 372, 374, 385, 393, 402, 408, 425, 427, 429, 431, 436, 438, 444, 450, 456, 472, 481, 497, 502, 507, 511, 516, 520, 525, 530, 535, 537, 542, 547, 550, 553, 565, 570, 576, 578, 580, 588, 590, 596, 598, 600 and 606 of Plaintiffs' Complaint, Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

As to Paragraphs 281, 283-286, 288, 290-293, 295, 297-299, 301, 303-307, 309, 311-315, 317, 319, 320-323, 325, 327-331, 333, 334-339, 341, 343, 344-347, 349, 351, 352-355, 359-363, 365, 367-371, 373, 375-384, 386, 387-392, 394-401, 403-407, 409-424, 426, 428, 430, 432-435, 437, 439-443, 445-449, 451-455, 457, 468-471, 473-480, 482-485, 498-501, 503-506, 508-510, 512-515, 517-519, 521-524, 526-529, 531-534, 536, 538-541, 543-546, 548, 549, 551, 552, 554-564, 566-569, 571-575, 577, 579, 581-587, 589, 591-595, 597, 599, 601-605, and 607-610 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, denies same.

## **COUNT 35**

**Barry H. Warner**

458. Defendant admits the allegations set forth in Paragraph 458 of Plaintiffs' Complaint.

459. Defendant admits the allegations set forth in Paragraph 459 of Plaintiffs' Complaint.

460. Defendant denies the allegations set forth in Paragraph 460 of Plaintiffs' Complaint.

461. Defendant denies the allegations set forth in Paragraph 461 of Plaintiffs' Complaint.

462. Defendant denies the allegations set forth in Paragraph 462 of Plaintiffs' Complaint.

463. Defendant denies the allegations set forth in Paragraph 463 of Plaintiffs' Complaint.

#### **COUNT 36**

##### **Barry H. Warner - Negligence**

464. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

465. Defendant denies the allegations set forth in Paragraph 465 of Plaintiffs' Complaint.

#### **COUNT 37**

##### **Violation of Rhode Island General Laws Title 9, Chapter 1, Section 2**

466. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

467. Defendant denies the allegations set forth in Paragraph 467 of Plaintiffs' Complaint.

## **COUNT 41**

### **American Foam Corporation - Negligence**

486. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

487. Defendant admits the allegations set forth in Paragraph 487 of Plaintiffs' Complaint.

488. Defendant admits it is a distributor of foam and that a sale of the foam took place prior to February 20, 2003, but is without knowledge as to who actually sold the foam to The Station nightclub. Defendant denies the remaining allegations set forth in Paragraph 488 of Plaintiffs' Complaint.

489. Defendant denies the allegations set forth in Paragraph 489 of Plaintiffs' Complaint.

490. Defendant denies the allegations set forth in Paragraph 490 of Plaintiffs' Complaint.

491. Defendant denies the allegations set forth in Paragraph 491 of Plaintiffs' Complaint.

## **COUNT 42**

### **American Foam Corporation - Strict Liability**

492. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

493. Defendant denies the allegations set forth in Paragraph 493 of Plaintiffs' Complaint.

494. Defendant denies the allegations set forth in Paragraph 494 of Plaintiffs' Complaint.

495. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 495 of Plaintiffs' Complaint, and therefore, denies same.

496. Defendant denies the allegations set forth in Paragraph 496 of Plaintiffs' Complaint.

**WHEREFORE**, Defendant, ***Barry Warner***, demands judgment against Plaintiffs for costs.

#### **FIRST AFFIRMATIVE DEFENSE**

Defendant denies the applicability of the doctrine of strict liability in tort to this litigation.

#### **SECOND AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs' claims against Defendant are barred because damages or losses experienced, if any, were not due to any act or failure to act of this Defendant, but were caused solely by the acts of a third-party or parties for whose acts or failure to act this Defendant is not responsible.

#### **THIRD AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs were not in the exercise of due care, but rather the negligence of Plaintiffs contributed to or caused the injuries or damages complained of, and therefore, the recovery of Plaintiffs is barred in whole or in part, or is subject to diminution.

#### **FOURTH AFFIRMATIVE DEFENSE**

Defendant gave no warranties, express or implied, to Plaintiffs or to anyone acting on their behalf.

#### **FIFTH AFFIRMATIVE DEFENSE**

Defendant states that if there were express or implied warranties as alleged in the Complaint, which Defendant specifically denies, Plaintiffs were not within the scope of any such alleged warranties and no sale to Plaintiffs ever occurred of any product sold or distributed by Defendant.

#### **SIXTH AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs' claims based on allegations of express or implied warranty are barred for the reason that no sale of goods occurred.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Defendant states that no one relied upon the skills and judgment of the Defendant in selecting the product referred to in the Complaint.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Defendant states that if it was liable, negligent or in breach of any warranty, all of which it expressly denies, Defendant's liability in any or all of those events has been terminated by the intervening acts, omissions, or negligence of others for whose conduct Defendant is not legally responsible.

### **NINTH AFFIRMATIVE DEFENSE**

Defendant states that the Complaint fails to state any claim upon which relief can be granted to the extent that it seeks punitive or exemplary damages, which are not recoverable under applicable law.

### **TENTH AFFIRMATIVE DEFENSE**

Defendant states that an award of punitive damages against Defendant in this case would be unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

### **ELEVENTH AFFIRMATIVE DEFENSE**

Defendant states that if Defendant, its agents or servants made any express or implied warranties, which Defendant specifically denies, then Defendant denies that it breached any of the warranties.

### **TWELFTH AFFIRMATIVE DEFENSE**

Defendant states that if Defendant, its agents or servants made any express warranties, allegations which Defendant specifically denies, then Plaintiffs did not rely on the express warranties and further, there was no such reliance by any person or entity authorized to represent Plaintiffs.

### **THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs failed to give notice of the alleged breaches of warranties within a reasonable time.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant states that Plaintiffs were not a third-party beneficiary with reference to any alleged warranties, either express or implied, and, therefore, Plaintiffs cannot recover in this action.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Defendant states that if Plaintiffs prove that Plaintiffs were injured as alleged, said injuries were caused by the intervening and/or superseding acts of third persons for whom this Defendant is not liable.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

Defendant pleads *General Laws of Rhode Island*, §9-1-32.

**BARRY WARNER**

By his Attorneys,

  
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Ronald Langlois, Esq. #2891  
**Smith & Brink, P.C.**  
One State Street, Suite 400  
Providence, Rhode Island 02908  
(401) 351-9970  
Fax (401) 274-6218

Dated: August 31, 2004

Defendant, **Barry Warner**, hereby claims a trial by jury.

  
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Ronald Langlois, Esq.



# CERTIFICATION

I hereby certify that I mailed a true copy of the within to the attorneys listed below on the 31 day of August, 2004.

Dana Palay

Stephen Breggia, Esq. Breggia Bowen & Grande 395 Smith Street Providence, RI 02908	Mark Hadden, Esq. Law Offices of Mark Hadden 68 Kennedy Plaza, Suite 3 Providence, RI 02903	Patrick Jones, Esq. Cooley Manion Jones, LLP One Center Place Providence, RI 02903
Mark Mandell, Esq. Yvette Boisclair, Esq. Mandell, Schwartz & Boisclair One Park Row Providence, RI 02903	James Lee, Esq. Chief, Civil Justice State of Rhode Island Dept. Attorney General 150 South Main Street Providence, RI 02903	Thomas Angelone, Esq. Hodosh Spinella & Angelone One Turks Head Place Suite 1050 Providence, RI 02903
Steven Minicucci, Esq. John Calvino Law Ass. 373 Elmwood Avenue Providence, RI 02907	Marc DeSisto, Esq. DeSisto Law 211 Angell Street P.O. Box 2563 Providence, RI 02906	James Murphy, Esq. Thomas Bender, Esq. Kelly Michels, Esq. Hanson Curran, LLP 146 Westminster Street Providence, RI 02903
Howard Merten, Esq. Benjamin White, Esq. Vetter & White 20 Washington Place Providence, RI 02903	Charles Redihan, Jr, Esq. Kiernan, Plunkett Redihan 91 Friendship Street Providence, RI 02903	Thomas Lyons, Esq. Strauss Factor Laing & Lyons 222 Richmond St, Suite 208 Providence, RI 02903
Donald Maroney, Esq. James Reilly, Esq. Kelly Kelleher Reilly & Simpson 146 Westminster St, Suite 500 Providence, RI 02903	Mark Reynolds, Esq. Anthony DeMarco, Esq. Reynolds DeMarco & Boland 170 Westminster St, Suite 200 Providence, RI 02903	Randall Souza, Esq. Fred Kelly, Esq. Nixon Peabody, LLP One Citizens Plaza, Suite 700 Providence, RI 02903
W. Thomas McGough, Jr., Esq. James Restivo, Jr., Esq. Reed Smith & Brink PC 435 Sixth Avenue Pittsburgh, PA 15219	<del>William Robinson, III, Esq.</del> Stephen Prignano, Esq. Edwards & Angell, LLP 2800 Financial Plaza Providence, RI 02903	Eva Mancuso, Esq. Hamel, Waxler Allen & Collins 387 Atwells Avenue Providence, RI 02909
Michael St. Pierre, Esq. Revens Revens & St. Pierre 946 Centerville Road Warwick, RI 02886	Edward Hinchey, Esq. Curtis Diedrich, Esq. Sloane & Walsh, LLP 127 Dorrance St, 4 <sup>th</sup> Floor Providence, RI 02903	Joseph Cavanagh, Esq. Kristin Rodgers, Esq. Blish & Cavanagh, LP 30 Exchange Terrace Providence, RI 02903
Max Wistow, Esq. Wistow & Baryllick, Inc. 61 Weybosset Street Providence, RI 02909		